

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GARY HARRIS,)	
)	2:02-cv-0028-GEB-CMK-P
Plaintiff,)	
)	
v.)	
)	<u>ORDER</u>
A.A. LAMARQUE,)	
)	
Defendant.)	

Petitioner, a state prisoner proceeding pro se, has timely filed¹ a notice of appeal of this court's August 30, 2005, denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of appealability indicating

¹ On September 9, 2005, petitioner filed an application to file a second or successive federal habeas petition in the Ninth Circuit. The application was construed as a notice of appeal of the district court's August 30, 2005, decision denying petitioner's application for a writ of habeas corpus, and it was transferred to the Eastern District of California pursuant to 28 U.S.C. § 1631. The notice of appeal is deemed filed as of the date it was filed in the wrong court and is, therefore, timely.

1 which issues satisfy the required showing or must state the reasons
2 why such a certificate should not issue. Fed. R. App. P. 22(b).

3 For the reasons set forth in the magistrate judge's
4 findings and recommendations, as adopted in full on August 30,
5 2005, petitioner has not made a substantial showing of the denial
6 of a constitutional right. Accordingly, a certificate of
7 appealability should not issue.

8 IT IS SO ORDERED.

9 Dated: January 26, 2006

10 /s/ Garland E. Burrell, Jr.
11 GARLAND E. BURRELL, JR.
12 United States District Judge
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